IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3693 of 1998
with
SPECIAL CIVIL APPLICATION No 3694 of 1998
With
CIVIL APPLICATION NO.14379 OF 1999

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ROHIT S MANKAD

Versus

BANK OF INDIA

Appearance:
MR PV HATHI for Petitioner No. 1
SERVED BY RPAD - (R) for Respondent No. 1
NANAVATI ASSOCIATES for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 31/08/2004

CAV JUDGEMENT

1.1 Both the above petitions were filed by the same

petitioner and as the subject matter of both the petitions is interconnected they are heard and decided by way of this common judgement. In Special Civil Application No.3693/98 the petitioner has challenged the legality and validity of orders dated 7th December 1996 passed by the second respondent and the order in appeal dated 29th January 1998 passed by the Executive Director, the Appellate Authority of the respondent Bank, imposing a major penalty of compulsory retirement and to direct the respondent Bank to reinstate the petitioner on his original post and to grant him all consequential benefits.

1.2 In Special Civil Application No.3694/1998 the petitioner has prayed for a direction to the respondents to pay full backwages to the petitioner from 11th January 1994 till 7th December 1996 as his suspension order can be said to have lapsed on termination of criminal proceedings. In the alternative it is prayed for a declaration that the petitioner. was entitled to subsistence allowance from the date of his suspension i.e. from 17th April 1980 to the date of the order of compulsory retirement i.e. 7th December 1996.

2.1 The petitioner joined the service of the respondent Bank in the year 1960 in clerical cadre and thereafter he was promoted to the post of Officer in May 1969. He was second officer at Bharuch Branch in 1970 and he was transferred as Manager in 1975 to the Umalla Branch of the respondent Bank.

2.2 While the was working as Officer at Bharuch Branch an incident of foregery pertaining to the credit note sent from Billimora Branch to its Bharuch Branch came to light in the year 1976. On investigation it was revealed that on March 18, 1975 a Saving Bank Account No.3083 was opened in the name of one Shri K.M. Patel with an initial deposit of Rs.11 being credited in that account on March 22, 1975. A credit note No.2726 dated March 20, 1975 for Rs.50,100/in the name of said Shri K.M. Patel was received by Bharuch Branch from Billimora Branch fo respondent bank. The said credit note bear the signature of oen Shri R.C. Vatani with his Code number specified as V.32 with signature of the accountant without code number, and the credit was accordingly given in the account of Shri K.M. Patel.

2.3 In pursuance of this incident the petitioner was served with a letter dated 24th January 1976 stating as to whether he had verified the signature on the credit note to which the petitioner replied that he

tried to verify the signature on the credit note and he could verify the signature of one Shri Vatani, another officer, without code number. He also consulted the Agent who after verifying the signatures instructed the petitioner to make credit Accordingly he made the payment.

2.4 According to the petitioner, he suddenly received an order of termination of his services with effect from 11th August 1976. The petitioner therefore preferred an appeal before the Chairman of the respondent Bank, who dismissed the appeal. The petitioner therefore filed Special Civil Application No.2083/76 before this Court challenging the order of dismissal from service. This Court by judgement and order dated 28/29th January 1980 allowed the same and directed the bank to reinstate the petitioner and to give him all consequential benefits.

2.5 In pursuance of the order of this Court the petitioner joined his service at Surat on 1st April 1980. Thereafter, by an order dated 17th April 1980, the petitioner was suspended from service on the ground that disciplinary proceedings were contemplated against him for serious irregularities and misconduct. The petitioner was served with article of charges and statement of allegations made against the petitioner. Inquiry proceedings were initiated against the petitioner and a criminal complaint also came to be lodged against him. The petitioner was accused of having abetted the offences committed under sections 419, 420, 468, 471 and 34 of IPC.

2.6 The respondent bank did not stay the departmental proceedings and therefore the petitioner filed Special Civil Application No.3615/80 before this Court wherein stay was granted against departmental inquiry. Ultimately the criminal proceedings initiated against the petitioner had culminated into the conviction of the petitioner by order dated 14th September 1981 in Criminal Case No.2669/80 passed by the Judicial Magistrate, First Class, Bharuch. The appeal preferred by the petitioner against the said decision also came to be dismissed. However, the aforesaid orders were quashed in Criminal Revision Application by allowing the said application by this Court by judgement and order dated 11/12th January 1994. Thereafter Special Civil Application No.3615/80 came to be disposed of and the respondent Bank started departmental proceedings.

2.7 Inquiry was conducted and the Inquiry Officer submitted his findings on 23rd January 1996 and the petitioner was called upon to submit his explanation against the Inquiry Report. Petitioner submitted that the inquiry report dated 23rd January 1995 did not contain the discussion on various charges and therefore at the request of the Bank the Inquiry Officer prepared another Inquiry Report which was submitted on 4th March 1996 and the petitioner was called upon to submit his representation.

2.8 The petitioner submitted his representation and after considering the records, the second respondent decided to impose penalty of compulsory retirement in terms of Regulation 4(F) of the Regulations by passing an order on 7th December 1996.

2.9 Against the said decision the petitioner preferred an appeal before the Appellate Authority which came to be dismissed by order dated 29th January 1998. The petitioner has challenged the legality and validity of the aforesaid orders and also claimed full backwages from 11th January 1994 till 7th December 1996 in these petition.

3.1 The contentions raised in Special Civil Application No.3693/98 on behalf of the petitioners can be summarized as under:

[1] That the impugned orders were passed in breach of the principles of natural justice inasmuch as none of the authorities had given personal hearing though demanded specifically on the ground that the Regulations of the Bank did not provide for opportunity for personal hearing.

[2] That the Disciplinary Authority while passing the order dated 7.12.1996 had travelled beyond the charges levelled against the petitioner and proceeded to conclude against the petitioner on the material and/or against the charges of which no notice was given to the petitioner. Therefore, the findings arrived at and the conclusions reached by the Disciplinary Authority and as confirmed by the Appellate Authority are required to be quashed and set aside.

[3] That the impugned orders were passed without supplying necessary documents demanded by the

petitioner and in not permitting him to reexamine the principal witness Shri C.G. Bhatt which has caused serious prejudice to the petitioner.

[4] That the departmental inquiry was conducted against the petitioner in 1996 after a lapse of about 18 years in respect of an incident of 1975 which amounted to denial of reasonable opportunity to the petitioner.

[5] That the impugned order of compulsory retirement is the outcome of bias and prejudice entertained against the petitioner who has been able to obtain a favourable verdict from this Court.

[6] The order of penalty and compulsory retirement was excessive and disproportionate and the Bank ought to have imposed minor penalty to meet the ends of justice.

[7] That there was non regularization of suspension period from 1980 to 1996-98 as required by Bank's Regulation No.15.

3.2 The contentions raised in Special Civil Application No.6394/98 are as under:

[1] That the order of suspension dated 17.4.1980 lapsed or is deemed to have lapsed on acquittal order being passed on 11.1.1994 by this Court on conclusion of criminal proceedings and as no fresh suspension order was passed, the eptitioner was entitled to full backwages from January 1994 till the order of penalty of compulsory retirement dated 7.12.1996 was passed.

[2] That even if it is assumed that the order of suspension remains in operation, the respondent Bank has not paid full amount of subsistence allowance on the basic pay and allowances as revised from time to time from the date on which the petitioner was not paid till 7.12.1996 when the penalty order was passed.

[3] That the respondent Bank has illegally denied the payment of medical bills submitted by the eptitioner before his statutory appeal was decided on 29.1.1998 on the ground that they

were submitted late so far as the bills for the period prior to the order of compulsory retirement was concerned and that there was no relationship of employer and employee on 7.12.1996 in respect of the medical bills for the epriod subsequent to that date.

[4] That the payment of medical bills were wrongly denied on the ground of delay.

4.1 As against the aforesaid submissions the learned counsel for the respondents has vehemently urged that inspite of instructions of superiors the petitioner had allowed to encash the credite note and the amount is withdrawn as a result of which loss has been caused to the bank and therefore the punishment imposed upon the petitioner is just and proper and does not warrant any interference by this Court.

4.2 Learned counsel for the respondents further submitted that the bank has followed the requisite procedure before passing the impugned order. The Disciplinary Authority and the Appellate Authority clearly held that the from the evidence on record it is proved that the charges framed against the petitioenr have been clearly established.

4.3 Learned counsel for the respondents pointed out from the affidavit in reply filed in Civil Application No.14379/99 in SCA No.3694/98 that all the legal dues which are required to be paid under the rules and regulations have been paid to the petitioner. He therefore submitted that both the petitions are required to be dismissed.

5.1 I have heard the learned counsel for the respective parties and also perused the relevant evidence on record. I may first deal with the contentions raised by the petitioner in Special Civil Application No.3693/98 as under:

6.1 The allegation made by the petitioner that the impugned orders were passed in breach of the principles of natural justice as the authorities have not given any personal hearing though demanded specifically is without any force inasmuch as, admittedly Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976, do not provide for giving a hearing to an officer employee on an appeal preferred by him. The petitioner has not challenged the rules which do not provide an opportunity

of hearing. When the rules do not provide such hearing, the petitioner cannot be heard to say that since he was not given opportunity of hearing, the impugned orders are illegal and bad in law. The Appellate Authority has considered his submission in this behalf and has dealt with the same in the Appellate Order and I do not find any infirmity in the said order.

6.2.1 However, it is required to be noted that a regular inquiry was conducted, the petitioner has filed his reply and he was allowed to produce certain documents. The petitioner had objected to the first Inquiry Report on the ground that it did not contain discussion on various charges. The respondent Bank has acceded to his request and the Inquiry Officer was constrained to prepare another Report. Thereafter the petitioner was given opportunity to submit his representation, which the petitioner did. It is after considering his representation and the record the order of punishment was passed. A perusal of the record clearly shows that the petitioner had sufficient opportunity to defend his case and I find no substance in the contention that the orders were passed in breach of principles of natural Justice.

6.1.2 Learned counsel for the petitioner has relied upon a decision of the Supreme Court in the case of Ram Chander Vs. Union of India, reported in AIR 1986 SC 1173. In paragraph 24 of the said decision it is held as under:

> "24 .... it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case ([1985]3 SCC 398) that the Appellate Authority must not only give a hearing to the Government servant concerned, but also pass a reasoned order dealing with the contentions raised by him in the appeal. Reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fairplay and justice also require that such a personal hearing should be given."

6.1.3 The provisions of Article 311 or rules framed

thereunder may not apply to the facts of the present case. Under the Regulations no hearing is contemplated and so far the rules are not held to be ultra vires and therefore the same are binding on both the bank as well as employees.

6.1.4 As narrated above, the petitioner has been given full opportunity before the authorities and therefore the aforesaid decision would be of no help to the petitioner.

6.2.1 The petitioner submitted that the respondent authorities proceeded to conclude against the petitioner on the material and/or against the charges of which no notice was given to the petitioner. A bare perusal of the evidence on record clearly shows that due care has been taken by the authorities concerned while conducting the inquiry and the departmental proceedings were conducted in the manner and in accordance with the procedure laid down by the regulations of the Bank.

6.2.2 The petitioner has failed to point out any provision for issuance of notice nor the petitioner has at any point of time objected or taken this contention before the Disciplinary Authority or Appellate Authority. In fact a letter was issued to the petitioner seeking clarification of the credit note in question to which satisfactory reply was not given by the petitioner. On the contrary the explanation given by the petitioner raised suspicion and thereafter the inquiry was initiated. Therefore, the contention of the petitioner that no notice was given cannot be accepted.

6.2.3 Learned counsel for the petitioner relied upon a decision of this Court in the case of State Bank of India Vs. K.P. Narayanan Kutty, reported in AIR 2003 SC 1100. In the said case The Enquiry Officer, after conducting enquiry, submitted a report holding that some of the charges were proved, some of the charges were partly proved and some of the charges were not proved. The disciplinary authority, while accepting the finding of the Enquiry Officer to the extent that some charges were proved and some of the charges were not proved, however, did not agree with the report of the Enquiry Officer as regards the finding that the charges were partly proved. The disciplinary authority held that those were fully proved.

6.2.4 In that view, on consideration of the material, the disciplinary authority recommended for dismissal of the delinquent officer from service. The said decision

was challenged before the High Court and the High Court set aside the order of dismissal on the ground that no opportunity was given to the respondent by the disciplinary authority in regard to the charges with which the findings of the Enquiry Officer were not agreed to by the disciplinary authority. The Supreme Court confirmed the said decision in the aforesaid decision. In the aforesaid decision it was clear that while not agreeing with the finding that the charges were not proved, the disciplinary authority did not hear the delinquent. However, in the present case, there was no such circumstance. The petitioner herein has been given sufficient opportunity throughout the hearing. The facts of the aforesaid case are entirely different from the facts of the present case and therefore the petitioner cannot take any help from the aforesaid decision.

6.3 The third contention of the petitioner is that he was not supplied with necessary documents and he was not permitted to reexamine the principal witness Shri C.G. Bhatt. Firstly, the petitioner has not pointed out as to how the non-supply of material affected the inquiry and how it prejudiced the inquiry. It was possible for the petitioner to take the aforesaid contention before the authority in which case the authority would have looked into the said aspect. The authority found the petitioner guilty and if those materials were relevant the petitioner would have certainly demanded to produce the same before the authority. This would show that there were no documents which would be helpful to the petitioner at any point of time. This contention is raised only with a view to voice a grievance that there is violation of principles of natural justice.

6.3.1 As regards the request for reexamination of Shri C.G. Bhatt is concerned, The Inquiry Officer has considered the same and rejected it. However, the petitioner has not challenged the said rejection by way of filing an appeal or petition. Therefore rejection of his request had become final and it cannot be considered in the present petition. In any case, the request for recross examination was made by the petitioner in the middle of the inquiry on the ground that the petitioner was not able to get specific replies to some of his questions from Mr. C.G. Bhatt. This would show that the petitioner had previously cross-examined the witness on all the points and therefore full opportunity to cross examine this witness was given to the petitioner. Therefore, in my opinion, merely because the petitioner

was not allowed to re-crossexamine this witness would not cause any prejudice to his case.

6.3.2 Learned counsel for the petitioner has relied upon a decision of this Court in the case of U.G. Dalsania Vs. Gujarat Electricity Board, reported in 2004(2) GLH 535 wherein it is held that when non-supplying of documents has caused prejudice whereby the delinquent could not effectively cross-examine witnesses, departmental proceedings stand vitiated on account of violation of principles of natural justice. However, in the present case the petitioner has cross-examined the witness and merely because the petitioner was not allowed to re-crossexamine it cannot be said that it has caused prejudice to his defence. Moreover, there is nothing on record to show as to how non-supply of material caused prejudice to his defence.

6.3.3 Defending the aforesaid contention, learned counsel for the respondents relied upon a decision of the Supreme Court in the case of K.L.Tripathi Vs. State Bank of India, reported in (1984)1 SCC 43. In the said case it is held that the concept of fair play in action, which is the basis of natural justice, must depend upon the particular lis between the parties. Where there is no lis regarding the facts,no real prejudice would be caused to a party by absence of any formal opportunity of cross-examination and that per se would not invalidate or vitiate the decision arrived at fairly. In the present case full opportunity to cross examine the witness was given to the petitioner. Merely because the petitioner was not allowed to re-cross examine this witness would not cause any prejudice to his case.

6.3.4. Learned counsel for the respondent has also relied upon a decision of this Court in the case of Hasmukhlal V. Shah Vs. Bank of India & Ors., reported in 1997(1) GLH 652 wherein it is held that there is nothing wrong on the part of disciplinary authority placing reliance on the statements of witnesses recorded previously without examining witnesses at the inquiry provided fair opportunity is given to the delinquent to explain the statements and examine any witnesses in defence, if so desired or advised. In para 26 of the said decision it is held as under:

"26. In the case of Railway Board, New Delhi and Anr. (supra), the Supreme Court considered the question whether the view that if an order of removal is based on number of grounds and one or more of those grounds are fund to be

> sustainable, the order is liable to be struck down, is right. Before the Supreme Court, it was not in dispute that the first charge levelled against the respondent was a serious charge and it would have been appropriate for the authority to remove the respodnent from service on the basis of finding on that charge. It was argued before the Supreme Court that the Court shuld not assume that the approopriate authority would have inflicted that punishment solely on the basis of that charge and cosnequently the Court should not sustain the punishment imposed if it was held that one of the two charges on the basis of which it was imposed was unsustainable. While negativing that contention, the Supreme Court has held that if the order in an enquiry under Article 311 can be supported on any finding as substantial misdemeanour for which the punishment imposed can lawfully be imposed it isnot for the Court to consider whether that ground alone would have weighed with the authority in imposing the punishment in question. Similar is the view expressed by the Supreme Court in the case of Pyare Lal Sharma (supra)."

6.4 The fourth contention of the petitioner is that the Departmental Enquiry conducted against the petitioner in 1996 after a lapse of about 18 years in respect of an incident of 1975 has resulted into serious prejudice to the defence of the petitioner.

6.4.1 In this connection it is required to be noted that since the chargesheet was filed on 2.11.1980 the petitioner filed SCA No.3615/80 challenging the suspension order and restraining the Bank from proceeding with the departmental inquiry against him during the pendency of the criminal prosecution. Due to the interim orders dated 20.3.1981 and 17.4.1981 passed by this Court in SCA No.3615/80 restraining the Bank from taking further proceedings in the domestic inquiry in view of the pendency of the criminal proceedings, the departmental inquiry was kept in abeyance. Only after the final order dated 16.9.1993 passed by this Court in SCA No.3615/80, vacating the interim relief, the Bank could proceed with the inquiry.

6.4.2 The petitioner has failed to point out that it is because of the failure of the respondent Bank the inquiry

could not be conducted earlier. It is because of the orders of this Court passed in the proceedings filed by the petitioner, the respondent Bank could not proceed with the departmental inquiry. The delay cannot be attributed on the part of the respondent Bank. Therefore, there is no substance in the aforesaid contention of the petitioner. It is not open to the petitioner to contend this ground since delay was at his instance. Hence the petitioner cannot be allowed to take advantage of his own inaction action of securing stay against inquiry.

6.5 The contention raised by the petitioner that the order of compulsory retirement is the outcome of bias and prejudice entertained against the petitioner since he has obtained favourable orders from this Court is without any force. It is only after the inquiry was conducted the order of punishment has been passed. Reasonable opportunity was afforded to the petitioner.

6.5.1 Even the appellate order is elaborate and reasoned one. In the appellate order it is clearly observed that from the evidence on record it is proved that the charges framed against the petitioner have been clearly established and there is no case for victimisation in any manner. No malafide is alleged against any officer. There is no allegation about having kept any grudge against the petitioner by the authorities. The respondent bank is an institution, which would not gain anything by showing bias against the petitioner. In absence of any proof, the contention of bias on the part of the respondent authorities cannot be accepted.

6.6 The next contention of the petitioner is that the bank ought to have imposed minor penalty in the interests of justice. Admittedly the delay in conducting the departmental inquiry was due to the orders passed by this Court in the proceedings initiated by the petitioner. In the Inquiry the charges levelled against the petitioner have been proved. The respondent authorities, after considering all the facts and circumstances and the gravity of the charges levelled against him has passed the order of compulsory retirement. This court cannot sit in appeal over the decision of the disciplinary authority and substitute its own decision. In any case, looking to the gravity of misconduct I fully agree with the order passed by the Disciplinary Authority imposing penalty of compulsory retirement.

6.6.1 Learned counsel for the petitioner relied upon a decision of this Court in the case of Jagdischandra Maganlal Trivedi Vs. State Bank of India, reported in 2004(2) GLH 514. In the said decision it is held that if the punishment imposed by the disciplinary authority shocks the conscience of the Court, the Court can substitute the penalty with its own and while coming to such conclusion if the Court apprises the evidence on the basis of which the order is made such exercise cannot be termed as reappreciaiton of evidence.

6.6.2 As against the aforesaid decision learned counsel for the respondents relied upon a decision of the Supreme Court in the case of Tripura Gramin Bank Vs. Tarit Baran Roy, reported in (2001)10 SCC 70. In paragraph 4 the Supreme Court held as under:

> "4. .... Having examined the impugned judgement of the High Court we have no manner of doubt that the High Court grossly erred in law in interfering with the quantum of punishment on the application of the principle that the punishment is grossly disproportionate tot he quantum of delinquency, obviously referable to Section 11-A of the Industrial Disptues Act. In our opinion, those principles engrafted in Section 11-A of the Industrial Disputes Act cannot be engrafted into the disciplinary proceedings either in relation to a government servant or other employee whose service conditions are governed by a set of rules and not the provisions of the Industrial Disputes Act. That apart, in exercise of second appellate jurisdiction, it was not open for the High Court to reappreciate the materials on the basis of which the enquiry officer arrived at his conclusion, and come to a different finding and on this score also the impugned judgement is vitiated. In the aforesaid premises, the impugned judgement of the High Court in second appeal cannot be sustained. We accordingly quash the same and the suit stands dismissed. This appeal is allowed."

6.6.3 In view of the above decision, it is not open for this court to reappreciate the materials on the basis of which the enquiry officer arrived at his conclusion and to interfere with the quantum of punishment.

6.6.4 Similar principle has been laid down by the Supreme Court in the case of Regional Manager, UPSRTC Vs. Hoti Lal, reported in AIR 2003 SC 1462 (=2003 SCC (L&S) 363). The Supreme Court reiterated the principle that the disciplinary authority and on appeal the appellate authority, being fact finding authorities, have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty.

6.6.5 Learned counsel for the respondents has also relied upon a decision of the Supreme Court in the case of Chairman & Managing Director, United Commercial Bank Vs. P.C. Kakkar, reported in (2003)4 SCC 364, wherein it is held that punishment imposed by disciplinary authority, unless shocking to the conscience of the court/tribunal, cannot be made subject to judicial review. On the facts of the present case there is nothing to show that the punishment imposed by the disciplinary authority is shockingly disproportionate so as to cause interference in the present matter.

7.1 The petitioner has contended that non-regualrisation of Suspension period from 1980 to 1996-98 as required by Bank's Regulation No.15 is illegal and bad in law. From the record it appears that the petitioner has been paid appropriate subsistence allowance as per the regulation of the respondent Bank form the date of the order of suspension till the date of order of penalty passed by the Disciplinary Authority. When the order of penalty inflicting compulsory retirement on the petitioner is passed, there is no question of regularisation of the suspension period as the petitioner was no more in service with the respondent Bank. In view of this situation I do not find any substance in the above contention of the petitioner.

8.1 Learned counsel for the respondent has relied upon a decision of the Supreme Court in the case of Railway Board, New Delhi VS. N. Singh, reported in AIR 1969 SC 966 wherein it is held that the High Court in certiorari jurisdiction would not interfere with the conclusion arrived at by the Enquiry Committee.

8.2 Another decision cited by the learned counsel for the respondent is in the case of Regional Manager,

UPSRTC Vs. Hotilal, reproted in AIR 2003 SC 1462. In that decision the Supreme Court held as under:

> "10. A mere statement that it is disproportionate would not suffice. A party appearing before a Court, as to what it is that the Court is addressing its mind. It is not only the amount involved but the mental set up, the tyupe of duty performed and similar relevant circumstances which go into the decision making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trust-worthienss is must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of elarned single upholding order of dismissal." (emphasis supplied).

9.1 To sum up, a bank officer is required to exercise higher standards of honest and integrity. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. In view of the aforesaid discussion I am of the opinion that looking to the gravity of the charges proved against the petitioner, the punishment imposed upon him is not shockingly disproportionate so as to cause interference.

9.2 It is also a settled law that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court in the sense that it was in defiance of logic or moral standards. Learned counsel for the petitioner could not point out any infirmity in the conduct of the inquiry or the punishment. There is nothing on record to show that any prejudice was caused during the departmental inquiry. Therefore this is not a fit case to cause interference under Article 226 of the Constitution of India.

10.1 I may now deal with the contentions raised on behalf of the petitioner in Special Civil Application No.3694/98.

10.2 In the aforesaid petition the petitioner has mainly claimed backwages and the payment of medical bills which were rejected by the respondent bank. This contention has been dealt with by the respondent Bank in the affidavit in reply filed in SCA No.3694/98. Para 28 of the affidavit in reply reads as under:

"28. Contents of para 3.9 are denied hereby. I deny that in view of Regulation 15, the respondent Bank is required to pass specific order on termination of criminal proceedings or departmental proceedings as alleged. I submit that the earlier order of suspension merges with the order of terminating the services of the petitioner and therefore the said contention of the petitioner being ill-founded, contrary to settled principles of law cannot be given any credence. I state that in view of the orders dated 7.12.96 and 29.1.98 passed by the respondents, the relationship of employer and employee ceases to exist. I further state that in view of an order dated 7.12.1996, the employer employee relationship qua the respondent Bank and the petitioner ceased to exist. I submit that in view of the said order passed by this Hon'ble Court, the respondent Bank has paid subsistence allowance as applicable to the petitioner in view of Circular dated 21.6.83 and 26.9.86, 7.4.98 & 24.10.98.

I submit that in view of H.O. Circular dated 21.6.83, the medical expenses incurred by the employees of the respondent Bank are admissible to the employees who were placed under suspension. In the instant case, although the petitioner was under suspension, till the order dated 7.12.96 of compulsory retirement was passed, the petitioner has submitted his medical claims/expenses incurred by him on behalf of his family and the petitioner, way back from the period of 1.4.80 till 31.3.98. Such unreasonable, reckless, negligent delay on the part of the petitioner for the purpose of submitting alleged medical claims is not at all explained. I further submit that the petitioner has submitted the

> said medical claims on 8.8.97, that is, after an order dated 7.12.96 terminating the services of the petitioner was passed by the respondent Bank. I further submit that the bills submitted by the petitioner are in respect of the treatment which the petitioner claims to have undergone after an order of compulsory retirement passed against the petitioner and therefore the respondent Bank is not required to pay the said bills amounting to Rs.1,25,211.70. However, in respect of the old bills in respect of medical treatment, during the period of 1980 to 31.3.96, there is unreasonable delay, which is not explained by the petitioner and therefore the respondent Bank cannot consider the same. It is pertinent to note that the advise to the said effect was also issued by the Chief Manager, Surat (M) Branch vide letter dated 17.12.97."

10.2.1 Looking to the facts of the case, the contention that as the petitioner in the criminal proceedings has been the order of suspension cannot automatically be terminated. In view of the order dated 7.12.96. In fact the petitioner was paid subsistence allowance as per Circular dated 21.6.83 and 26.9.86.

10.2.2 As per Circular dated 21.6.83, the petitioner is not entitled to get benefit of his annual increment in his basic pay. On behalf of the respondent Bank it is pointed out that in view of Circular dated 26.9.86, the officers who are under suspension from the date of prior to 1.4.84, should continue to be paid subsistence allowance at the stipulated scale on the basis of basic pay in the old scale payable on the date prior to the date of suspension and also the allowance calculated on the reduced pay at the rates prevailing on the date prior to the date of suspension. The said Circular also clarifies that in case of Officers who were placed under suspension on or after 1.12.84, they will be paid subsistence allowance at the stipulated scale on the basis of the basic pay in the new scale payable on the date prior to the date of suspension as also the allowance calculated on the reduced pay in the new scale at the rates prevailing on the date prior to the date of suspension. According to the learned counsel for the respondent, the said instructions are still in force.

10.2.3 Learned counsel for the respondent pointed out Regulations 14 and 15 of the Bank of India Officer

Employees' (Discipline and Appeal) Regulations, 1964 which read as under:

14. Subsistence allowance during suspension:

(1) An officer employee who is placed under suspension and subject to sub-regulation (2) to (4) be entitled to receive payment from the bank by way of subsistence allowance on the following scale, namely:-

(a) Basic Pay:

(i) For the first three months of suspension 1/3 of the basic pay which the officer employee was receiving on the date prior to the date of suspension irrespective of the nature of enquiry.

(ii) For the subsequent period after 3 months from the date of suspension.

(1) Where the enquiry is held departmentally by the bank, 1/2 of the basic pay, the officer employee was drawing on the date prior to the date of suspension; and

(2) where the enquiry is held by an outside agency 1/3 of the basic pay for the next three months and 1/2 of the basic pay for the remaining period of suspension.

(by) Allowances: For the entire period of suspension, dearness allowance and other allowances excepting conveyance allowance, entertainment allowance and special allowance will be calculated on the reduced pay as specified in items (i) and (ii) of clause (a) and at the prevailing rates or at rates applicable to similar category of officers.

(2) During the period of suspension an officer employee shall not be entitled

to occupation of a rent-free house or free use of the bank's car or receipt of conveyance or entertainment allowance or special allowance.

(3) No officer employee of the bank shall be entitled to receive payment of subsistence allowance unless he furnishes a certificate that he is not engaged in any other employment, business, profession or vocation.

(4) If, during the period of suspension an officer employee retire by reason of his attaining the age of superannuation,no subsistence allowance shall be paid to him from the date of his retirement."

15. Pay, allowances and treatment of service on termination of suspension:

(1) Where the competent authority holds that the officer employee has been fully exonerated or that the suspension was unjustifiable, the officer employee concerned shall be granted the fullpay to which he would have been entitled, had he not been suspended, together with any allowance of which he was in receipt immediately prior to his suspension, or may have been sanctioned subsequently and made applicable to all officer employees.

(2) In all cases other than those referred to in sub-regulation (1), the officer emplyee shall be granted such proportion of pay and allowances as the Competent Authority may direct:

Provided that the payment of allowances under this sub-regualtion shall be subject to all other conditions to which such allowances are admissible:

Provided further that the pay and allowances granted under this regulation shall not be less than the subsistence and other allowances admissible under regulation 14.

(3) (a) In a case falling under sub-regulation (1), the epriod of absence from duty shall, for

all purposes, be treated as a period spent on duty:

(b) In a case falling under sub-regulation (2) the epriod of absence from duty shall not be treated as a period spent on duty unless the Competent Authority specifically directs, for reasons to be recorded inw riting that it shall be so treated for any specific purpose."

10.2.4 Thus, in view of the above discussion, especially regulation 14, I do not find any substance in the claim of backwages by the petitioners.

10.3 As regards the claim of medical bill is concerned, it is a fact that even while on service, there is a time limit for submission of medical bills. Although the petitioner was under suspension till the order dated 7.12.96 of compulsory retirement was passed, he has submitted his medical claim for the period from 1.4.80 to 31.3.98. There was gross delay in submission of the bills and the petitioner has not explained the delay at all. He has submitted the said bills after the order dated 7.12.96 terminating the services of the petitioner. Apart from that certain bills submitted by the petitioner are in respect of the treatment which the petitioner claims to have undergone after the order of compulsory retirement. Under these circumstances, I do not find any substance in the contention raised by the petitioner in respect of rejection of his medical bills.

11.1 In view of the above discussion, I do not find any merits in any of the contentions raised on behalf of the petitioner in both the above petitions. In the result, the petitions are rejected. Rule is discharged with no order as to costs.

10.2 Since the main petition i.e. SCA No.3694/98 has been disposed of, Civil Application No.14379/99 does not survive and is accordingly disposed of.

[K.S. JHAVERI, J.]
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